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14
15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17
18 COLUMBIA PICTURES
INDUSTRIES, INC., *et. al.*

19 Plaintiffs,
20 v.

21 GARY FUNG, *et. al.*

22 Defendants.

23 Case No. CV-06-05578 SVW (JCx)

24
25 **PLAINTIFFS' MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT ON
COPYRIGHT OWNERSHIP,
CAUSATION, AND DIRECT
INFRINGEMENT**

26 Date: October 28, 2013

27 Time: 1:30 PM

28 Ctrm: 6

Judge: The Hon. Stephen V. Wilson

(REDACTED VERSION)

Plaintiffs hereby move for summary judgment establishing that Plaintiffs own, and Defendants are liable for the direct infringement of the 3,947 copyrighted works identified in the list appended hereto as Exhibit 1 to the Aul Declaration (the “MSJ Works”).¹

BACKGROUND

6 In *Columbia Pictures Indus., Inc. v. Fung*, No. CV-06-05578 SVW (JCx),
7 2009 WL 6355911 (C.D. Cal. Dec. 21, 2009), this Court concluded that Defendants
8 are liable for inducing copyright infringement. The Ninth Circuit affirmed. 710
9 F.3d 1020 (9th Cir. 2013). On remand, this Court has ruled that, to establish
10 causation and direct infringement for each copyrighted work for which they seek
11 statutory damages, “Plaintiffs will need to prove that, for each work, they 1) owned
12 the copyright; and 2) that an *American* user downloaded a Dot-Torrent file of that
13 work from one of Defendants’ websites.” Order, Aug. 7, 2013, ECF # 554, at 4
14 (emphasis in original); *see also* Order, July 3, 2013, ECF # 527, at 3 n.2 (“for
15 BitTorrent files downloaded from Defendants’ websites, no causation dispute exists:
16 Defendants have caused the infringement”). Both elements are plainly met here.

17 First, there is no genuine dispute of fact that Plaintiffs own each of the MSJ
18 Works. The official certificate of copyright registration for each work and the chain

¹ On September 16, 2013, at the Court’s direction, Plaintiffs file a listing of works in suit, identifying 4,145 of Plaintiffs’ copyrighted works (the “September 16 List”). ECF # 604. The MSJ Works that are the subject of this Motion are slightly fewer in number. Defendants’ untimely production of website server log data, which is the subject of a separate motion for sanctions before the Magistrate Judge, has substantially hampered the process of analyzing the full extent of Defendants’ infringement of Plaintiffs’ copyrighted works. That process is continuing. However, because Plaintiffs desire to maintain the November 5, 2013 damages trial date, and in the hope of streamlining the trial itself, Plaintiffs are prepared to limit their request for statutory damages to the fewer number of MSJ Works that are the subject of this Motion.

1 of title documents Plaintiffs have produced to Defendants prove as much beyond
 2 credible dispute. Moreover, [REDACTED]
 3 [REDACTED]
 4 [REDACTED] These facts establish as a

5 matter of law that Defendants are liable for the direct infringement of each MSJ
 6 Work.

7 Determining these issues on summary judgment will substantially streamline
 8 the November 5, 2013 trial in this matter. It will avoid the need to call eight or nine
 9 separate witnesses on these issues, and will avoid potentially having to present the
 10 jury with individualized evidence as to thousands of copyrighted works. The trial
 11 will then focus, as it should, on the jury's consideration of the quantum of statutory
 12 damages that should be awarded for each copyrighted work that Defendants have
 13 infringed.

14 **ARGUMENT**

15 Under Federal Rule of Civil Procedure 56(a), “[t]he court shall grant
 16 summary judgment if the movant shows that there is no genuine dispute as to any
 17 material fact and the movant is entitled to judgment as a matter of law.” Once the
 18 moving party has met its initial burden, the responding party must “identify specific
 19 facts that show a genuine issue for trial.” *Metro-Goldwyn-Mayer Studios, Inc. v.*
 20 *Grokster, Ltd.*, 454 F. Supp. 2d 966, 983 (C.D. Cal. 2006) (“*Grokster IV*”). “A
 21 scintilla of evidence or evidence that is merely colorable or not significantly
 22 probative does not present a genuine issue of material fact.” *Addisu v. Fred Meyer,*
 23 *Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000); *see also Grokster IV*, 454 F. Supp. 2d at
 24 983. “Only genuine disputes – where the evidence is such that a reasonable jury
 25 could return a verdict for the nonmoving party – over facts that might affect the
 26 outcome of the suit under the governing law will properly preclude the entry of

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 28

¹ summary judgment.” *Grokster IV*, 454 F. Supp. 2d at 983 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

3 As shown below, there is no genuine dispute here that, for each of the MSJ
4 Works, (1) Plaintiffs own the copyright in the work, and (2) a user in the United
5 States downloaded a Dot-Torrent file for the work from Defendants' websites.

6 | I. Plaintiffs Own the Copyright for Each of the MSJ Works.

7 Defendants cannot credibly dispute that Plaintiffs, the world’s major motion
8 picture studios, own the copyrights for each of the MSJ Works, based on the
9 documentation Plaintiffs have produced to Defendants. For most of these works,
10 one of the Plaintiffs-in-suit is listed by name directly on the official certificate of
11 copyright registration maintained by the United States Copyright Office. *See*
12 Statement of Uncontroverted Facts, dated September 30, 2013 (“SUF”) ¶ 1. Thus,
13 for example, Warner Bros. Entertainment Inc. is a Plaintiff and is asserting
14 infringement of its major motion picture “*Harry Potter and the Half-Blood Prince*,”
15 which is work number 3,352 on Exhibit 1 to the Aul Declaration. The official
16 Certificate of Registration (Number PA 1-647-906), which was produced to
17 Defendants, reveals the following:

“TITLE OF THIS WORK: Harry Potter and the Half-Blood Prince”

* * *

“COPYRIGHT CLAIMANT(S): Warner Bros. Entertainment Inc.”

22 See Declaration of Francis L. Aul, submitted herewith (“Aul Decl.”), Ex. 2 (U.S.
23 Copyright Office Certificate of Registration No. PA 1-647-906). This is *prima facie*
24 evidence that Plaintiffs own these copyrights. 17 U.S.C. § 410(c) (“In any judicial
25 proceedings the certificate of a registration made before or within five years after
26 first publication of the work shall constitute *prima facie* evidence of the validity of
27 the copyright and of the facts stated in the certificate”); *United Fabrics Intern., Inc.*
28 v. *C&J Wear, Inc.*, 630 F.3d 1255, 1257 (9th Cir. 2011) (same); *Island Software and*

1 *Computer Service, Inc. v. Microsoft Corp.*, 413 F.3d 257, 261 (2d Cir. 2005) (court
2 entitled to take judicial notice of copyright registrations as proof of copyright
3 ownership); *City of Carlsbad v. Shah*, 850 F. Supp. 2d 1087, 1100 (S.D. Cal. 2012)
4 (taking judicial notice of registration and holding that ownership had been
5 established based on registration).

For the remainder of the MSJ Works, Plaintiffs acquired ownership of the copyright through written assignments or transfers of title. *See* SUF ¶ 1; *Lumiere (Rights) Ltd. v. Baker & Taylor, Inc.*, No. 95-36192, 116 F.3d 484, 1997 WL 303244, at *3 (9th Cir. 1997) (unpublished table opinion) (transfer of copyright ownership can be established by written document signed by owner or agent). Most times the acquisition involved a direct transfer from the claimant in the Certificate of Registration to the Plaintiff-in-suit; other times it involved multiple transfers. Regardless, Plaintiffs have produced to Defendants documentation demonstrating a complete and unbroken chain of title. To illustrate with one of the more involved chains of title among the MSJ Works, Plaintiff Warner Bros. Entertainment Inc. is asserting infringement of the popular motion picture “*Analyze That*,” starring Robert De Niro and Billy Crystal (work number 2,541 on Exhibit 1 to the Aul Declaration). The official Certificate of Registration (Number PA 1-195-956), which was produced to Defendants, reveals the following:

“TITLE OF THIS WORK: Analyze That”

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“COPYRIGHT CLAIMANT(S): WV Films II LLC”

24 *See* Aul Decl. Ex. 3 (U.S. Copyright Office Certificate of Registration No. PA 1-
25 195-956). WV Films II LLC is not a Plaintiff-in-suit. However, official documents,
26 each of which was properly recorded with and maintained by the U.S. Copyright
27 Office, reflect the assignment of the rights to “*Analyze That*” to Plaintiff Warner
28 Bros. Entertainment Inc. Specifically:

- 1 • WV Film II LLC assigned the rights to “Warner Bros., a Division of Time
 2 Warner Entertainment Company, L.P.” *See* Aul Decl. Ex. 4 (U.S. Copyright
 3 Office Certificate of Recordation, Volume 3492, Page 694: “This
 4 Memorandum dated December 5, 2002 confirms that for value received, the
 5 undersigned, WV FILMS II LLC . . . has granted and licensed under copyright
 6 to WARNER BROS., a division of Time Warner Entertainment Company,
 7 L.P. . . . the exclusive right to market, distribute and otherwise exploit the
 8 theatrical motion picture entitled ‘ANALYZE THAT’”).
- 9 • Time Warner Entertainment Company, L.P. subsequently assigned the rights
 10 to the movie to “Warner Communications Inc.” *See* Aul Decl. Ex. 5 (U.S.
 11 Copyright Office Certificate of Recordation, Volume 3492, Pages 133-215, at
 12 1-4, 6 & 123: “COPYRIGHT ASSIGNMENT dated as of March 31, 2003
 13 made by Time Warner Entertainment Company, L.P. . . . in favor of Warner
 14 Communications, Inc.” for multiple works, including *Analyze That*).
- 15 • Warner Communications Inc. immediately assigned the rights to the Plaintiff-
 16 in-suit, “Warner Bros. Entertainment Inc.” *See* Aul Decl. Ex. 6 (U.S.
 17 Copyright Office Certificate of Recordation, Volume 3492, Pages 216-298, at
 18 1-4, 5 & 123: “COPYRIGHT ASSIGNMENT dated as of March 31, 2003
 19 made by Warner Communications, Inc. . . . in favor of Warner Bros.
 20 Entertainment Inc.” for multiple works, including *Analyze That*).

21 This sort of chain of title documentation fully proves Plaintiffs’ ownership of the
 22 MSJ Works. *See* Nimmer on Copyright § 12.11[C] (“Once plaintiff . . . submit[s]
 23 the certificate that he himself filed, or prov[es] his chain of title from the previous
 24 registrant[], the burden shifts to the defendant to establish the invalidity of plaintiff’s
 25 title from the author.”).

26 The copyright ownership evidence for each of the MSJ Works follows the
 27 same pattern: either the official Certificate of Registration on its face identifies the
 28

1 Plaintiff-in-suit as the owner by name, or Plaintiffs have produced both the
 2 Certificate of Registration and chain of title documentation showing the
 3 assignment(s) from the Claimant on the Certificate of Registration to the Plaintiff-
 4 in-suit.

5 Because there can be no genuine dispute as to these facts, Plaintiffs have
 6 established their ownership of each of the MSJ Works listed on Exhibit 1 of the Aul
 7 Declaration.²

8 **II. A Dot-Torrent File For Each MSJ Work Was Downloaded From
 9 Defendants' Websites By A User In The United States.**

10 To verify that a Dot-Torrent file for each MSJ Work was downloaded from
 11 Defendants' websites by a user in the United States, Plaintiffs:

12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]

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 19 ² Rather than submitting voluminous documents for the MSJ Works, each Plaintiff
 20 has submitted a declaration summarizing the basis for its ownership of each of its
 21 respective MSJ Works. *See* SUF ¶ 1. Plaintiffs, moreover, have produced all of the
 22 underlying documents in discovery, each of which is admissible as either a business
 23 record or a public record, to Defendants. Therefore, the Court may rely on these
 24 summaries in lieu of the underlying documents themselves. *See* Fed. R. Evid. 1006
 25 (“proponent may use a summary ... to prove the content of voluminous writings ...
 26 that cannot be conveniently examined in court”); *Trustees of Operating Engineers
 Pension Trust v. Smith-Emery Co., Inc.*, 906 F. Supp. 2d 1043, 1067-69 (C.D. Cal.
 27 2012) (plaintiffs may use Rule 1006 chart to support summary judgment motion, as
 long as underlying documents are admissible and were produced in discovery). Of
 course, should the Court wish to see the underlying documents, Plaintiffs are
 prepared to submit them at the Court’s request.

28

1 • Downloaded a Dot-Torrent file for each MSJ Work and manually verified that
2 the associated content file (*i.e.*, the movie or television show) is a full-length,
3 infringing copy of the corresponding MSJ work.

4 *See generally*, Declaration of Bruce J. Ward, submitted herewith (“Ward Decl.”)

5 ¶¶ 5-21; Aul Decl. ¶¶ 3-15. As a result, there cannot be any genuine dispute that, for
6 each MSJ Work, a user in the United States downloaded a corresponding Dot-
7 Torrent file from Defendants’ websites.

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED] Thus, Defendants’ own data

28

1 establish beyond dispute that, for each of the MSJ Works, a corresponding Dot-
2 Torrent file was downloaded from Defendants' websites. See SUF ¶ 2.
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] *Fung, 2009*

16 WL 6355911 at *9 n.16 (relying on IP address geolocation analysis; "Defendants'"
17 own expert has opined that IP-based location analysis is highly accurate"). Thus, it
18 cannot be disputed that, in every case, Dot-Torrent files for the MSJ Works were
19 downloaded by U.S. users – in most cases thousands of times. SUF ¶ 2.

20 3. Finally, Plaintiffs themselves downloaded Dot-Torrent files for each MSJ
21 Work from Defendants' websites, which resulted in the downloading of the actual
22

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 content file (the movie or television show) associated with the Dot-Torrent file.
 2 SUF ¶ 2; Aul Decl. ¶¶ 3-8; Ward Decl. ¶¶ 10-16. Plaintiffs then manually viewed
 3 each downloaded movie or television show to verify that the Dot-Torrent file in fact
 4 results in the downloading of a full-length infringing copy of the corresponding MSJ
 5 Work. SUF ¶ 2; Aul Decl. ¶¶ 3-5, 9-15. For example, Plaintiffs downloaded the
 6 Dot-Torrent file named “Harry.Potter.And.The.Half. Blood.Prince.2009.DvDRip-
 7 FxM” from Defendants’ website, which resulted in the automatic downloading of
 8 the associated content file; Plaintiffs then opened the content file and manually
 9 observed that it was indeed a full-length version of the copyrighted motion picture
 10 “*Harry Potter and the Half-Blood Prince*. ” While it is typically obvious from just
 11 the name of a Dot-Torrent file whether the file corresponds to one of Plaintiffs’
 12 works (as reflected in the “Harry Potter” illustration above), to eliminate any doubt,
 13 Plaintiffs downloaded and manually verified each MSJ Work. *Id.*

14 Plaintiffs followed this general procedure for each of the MSJ Works.

15 **CONCLUSION**

16 In sum, Plaintiffs have confirmed beyond genuine dispute that Plaintiffs own
 17 copyrights in each of the MSJ Works and that, for each such work, a user in the
 18 United States downloaded a corresponding Dot-Torrent file from one of Defendants’
 19 websites. By the terms of the Court’s August 7, 2013 Order, Plaintiffs have
 20 established ownership, causation, and direct infringement of each MSJ Work.
 21 Plaintiffs’ motion for summary judgment, therefore, should be granted.

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1 Dated: September 30, 2013

Respectfully submitted,

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